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In The  
Supreme Court of the United States

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JESSICA WILLIAMS,

*Petitioner,*

v.

STATE OF NEVADA,

*Respondent.*

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On Petition For A Writ Of Certiorari  
To The United States Court Of Appeals  
For The Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

### A.

Whether Petitioner Williams' federal habeas corpus petition should have been reviewed under 28 U.S.C. § 2241 not 28 U.S.C. § 2254.

### B.

Whether the Double Jeopardy Clause prohibits two verdicts for the same identical offense.

### C.

Whether the Double Jeopardy Clause is triggered when a defendant has been acquitted, *which acquittal became final* yet is convicted of the same identical offense in the same trial.

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## **PETITION FOR WRIT OF CERTIORARI**

JESSICA WILLIAMS (Jessica) respectfully prays that a Writ of Certiorari issue to review and reverse the six (6) state DUI convictions under NRS 484.3795 on the grounds that the Fifth Amendment Double Jeopardy Clause gives affect to an acquittal which has become final when a defendant has been acquitted and convicted of the same identical offense in the same trial. Also, review is necessary because the federal courts considered Jessica's habeas corpus petition as one under 28 U.S.C. § 2254 rather than 28 U.S.C. § 2241.

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### **OPINIONS BELOW**

1. The United States Court of Appeals for the Ninth Circuit. Appendix (App.) 1-12.
2. Federal District Court. App. 13-31.
3. The Nevada Supreme Court. App. 32-62.
4. State District Court Post Conviction Order. App. 63-67.

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### **JURISDICTION**

The date of the United States Court of Appeals for the Ninth Circuit Opinion was September 7, 2005. App. 1.

The date of the United States Court of Appeals for the Ninth Circuit denial of Jessica's petition for rehearing was October 14, 2005. App. 72.

The instant Petition for Writ of Certiorari is timely under United States Supreme Court Rule 13(1).



The instant petition for Writ of Certiorari is filed under United States Supreme Court Rule 10(c).

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## CONSTITUTIONAL PROVISIONS

### FIFTH AMENDMENT

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or navel forces, or in the Militia, when in actual service in time of War or public danger; **nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb**; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

### FOURTEENTH AMENDMENT

Section I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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## STATUTES INVOLVED IN THIS CASE

NRS 484.379 This Statute is incorporated in the App. 73-75.

NRS 484.3795 This Statute is incorporated in the App. 75-77.

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## STATEMENT OF THE CASE

Petitioner Jessica Williams (hereinafter "Jessica") was charged by the State with six (6) counts of felony Driving Under the Influence of drugs.<sup>1</sup> NRS 484.379 and NRS 484.3795 are Nevada's DUI statutes. App. 73-77. The allowable unit of prosecution under NRS 484.3795 is a *single* offense of Driving Under the Influence. App. 4-5. The *single* offense of DUI has been divided into several "discrete basis of liability."<sup>2</sup> See NRS 484.3795(1)(d) and (f). Nevada case law holds that NRS 484.3795(1)(d) and (f) are separate theories proving one *single* offense under NRS 484.3795.

At the close of the evidence, the trial judge erroneously divided each single DUI offense into two offenses and instructed the jury to return verdicts on each. The jury was allowed to return twelve verdicts for six (6) DUI offenses. App. 3. When the jury returned verdicts based on NRS 484.3795(1)(d), Jessica was acquitted of NRS

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<sup>1</sup> The incident occurred on March 19, 2000 when Jessica was twenty (20) years old.

<sup>2</sup> This Court in *Sanabria, infra*, refers to alternative means or theories of prosecution as "discrete basis of liability." See *Id.* at 72.

484.3795.<sup>3</sup> When the jury returned verdicts based on NRS 484.3795(1)(f), Jessica was found guilty of NRS 484.3795.<sup>4</sup> The trial judge accepted the acquittals as valid and lawful verdicts of the jury.<sup>5</sup> Upon the district court's acceptance, the acquittals become final. See NRS 175.541. Jessica had been acquitted and convicted of the same identical offenses in a single trial. Since Jessica had been acquitted of the six (6) NRS 484.3795 DUI offenses, she challenged the six (6) NRS 484.3795 DUI convictions (the same identical offenses) as being violative of the Fifth Amendment Double Jeopardy Clause.

Jessica raised her constitutional double jeopardy claim on appeal to the Nevada Supreme Court. App. 52-55. The court denied relief by applying *Blockburger v. United States*<sup>6</sup> to the alternative theories of prosecution. App. 52-54. This was plain error. The *Blockburger* analysis applies to separate offenses not to alternative theories of a single offense. *Sanabria v. United States* at fn. 24.<sup>7</sup> See also *United States v. Keen*.<sup>8</sup> The Nevada Supreme Court's

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<sup>3</sup> The Nevada Supreme Court held that Jessica was acquitted of NRS 484.3795. "The jury returned not guilty verdicts on the six counts of driving while under the influence. . . ." App. 39. The federal district court and the 9th Circuit acknowledged the acquittals. App. 15; App. 3.

<sup>4</sup> Jessica was sentenced to a minimum of eighteen (18) years and a maximum of forty-eight (48) years. Jessica must serve at least eighteen (18) years before being eligible for parole.

<sup>5</sup> *Smith* said "Double-jeopardy principles have never been thought to bar the *immediate repair* of a genuine error in the announcement of an acquittal, even one rendered by a jury." *Id.* at 11. (emphasis added.) Here, neither the trial judge nor the prosecution objected to the acquittals.

<sup>6</sup> 284 U.S. 299, 52 S. Ct. 180 (1932).

<sup>7</sup> 437 U.S. 54, 95 S. Ct. 2170 (1978).

<sup>8</sup> 104 F.3d 1111 (9th Cir. 1996).

reliance on *Blockburger* to defeat Jessica's double jeopardy claim "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States. . . ." 28 U.S.C. § 2254(d).<sup>9</sup>

In addition, the state high court said, "Further, we concluded that Williams' argument also lacks merit because she has been subjected to only one prosecution and one punishment for each DUI charge." *Williams* at 550.<sup>10</sup> Contrary to the Nevada Supreme Court's holding, this Court in *Smith v. Massachusetts, infra*, made clear that all double jeopardy protections are triggered in a single trial. Jessica filed a Writ of Certiorari in this Court which was denied on November 18, 2002, one issue being her double jeopardy claim.

A federal habeas corpus petition was filed in district court on July 25, 2003 challenging the State DUI convictions on double jeopardy grounds. Jessica's request for relief was denied by Order dated March 1, 2004. App. 13-31. The basis for denial of the double jeopardy claim was that "protection against twice being punished" is the only double jeopardy safeguard in a single prosecution.

The Double Jeopardy Clause provides three basic protections. First, it protects against a *subsequent* prosecution for the same offense after an acquittal. Second, it protects against a *subsequent* prosecution for the same offense after a

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<sup>9</sup> Jessica's federal habeas corpus filing was correctly a 28 U.S.C. § 2241 petition and should have been reviewed on a lesser standard than 28 U.S.C. § 2254. See Argument I, *infra*. However, Jessica's claim meets both standards.

<sup>10</sup> *Williams v. State*, 118 Nev. 536, 50 P.3d 1116 (2002). App. 55. The court provided no authority for its position.

conviction. And, third, it protects against multiple *punishments* for the same offense when the legislature did not intend multiple punishments. . . . **when a defendant is prosecuted on multiple charges at the the same time in a single prosecution, the first two protections against successive prosecution are not implicated, such that only the third protection is at issue.**

App. 27 (cite omitted) (italics original and bold added.)

Jessica filed an appeal to the United States Court of Appeals for the Ninth Circuit (hereinafter "9th Circuit").

The 9th Circuit denied Jessica's double jeopardy claim on the same basis used by the district court.

The Nevada Supreme Court correctly relied upon *United States v. Halper*, 490 U.S. 435, 440 (1989), *abrogated on other grounds by Hudson v. United States*, 522 U.S. 93, 96 (1997), when it noted, "the Double Jeopardy Clause protects against three distinct abuses: a second prosecution for the same offense after acquittal; a second prosecution for the same offense after conviction; and multiple punishments for the same offense." *Williams*, 50 P.3d at 1124 (internal citation and quotation marks omitted). *Williams* would like to carve out a fourth abuse against which double jeopardy ostensibly protects: the simultaneous conviction and acquittal of the same offense, under different theories, in the same trial by a single jury. Such an extension would not comport